

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-214327

DATE: February 22, 1984

MATTER OF: The Raymond Corporation

DIGEST:

A protest filed before best and final offers are due, which anticipates that an agency will not comply with the regulations concerning challenges to a successful offeror's status under the Walsh-Healey Act, will not be considered.

The Raymond Corporation protests any award to E.C. Campbell, Inc. by the Department of the Navy under request for proposals (RFP) No. N00600-83-R-3940. Raymond challenges the status of Campbell as a regular dealer under the Walsh-Healey Public Contracts Act, 41 U.S.C. § 35-45 (1976), and contends that the Navy apparently is going to accept Campbell's certification that it is a regular dealer without requiring any supporting facts. Raymond requests that the award be withheld pending a resolution of its challenge to Campbell's eligibility for award.

This Office does not consider protests challenging the legal status of a firm as a regular dealer or a manufacturer within the meaning of the Walsh-Healey Act. By law, this matter is to be determined by the procuring agency in the first instance, subject to review by the Small Business Administration (if a small business is involved) and the Secretary of Labor. Gillette Industries, Inc., B-204232, August 13, 1981, 81-2 CPD 139.


At the time the protest was filed, best and final offers were not yet due. The Navy advises that a pre-award survey will be conducted on the apparent successful offeror, which will include consideration of that firm's status under the Walsh-Healey Act. If the apparent successful offeror's status is further challenged, the Navy indicates that it will comply with

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Defense Acquisition Regulation (DAR) § 12-604(b)(2) (1976 ed.). DAR 12-604(b)(4), with limited exceptions, requires award to be withheld pending a decision by the SBA or Department of Labor on a Walsh-Healey eligibility protest.

Since the protest merely anticipates that the Navy will not comply with the regulations, the protest is dismissed.


for Harry R. Van Cleve
Acting General Counsel